

FCC MAIL SECTION
Federal Communications Commission

DA 96-1305

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Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | MM Docket No. 96-32 |
| Table of Allotments, |) | RM-8719 |
| FM Broadcast Stations. |) | |
| (Canton, Illinois and |) | |
| Canton, Missouri) |) | |

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 16 , 1996

Released: August 23, 1996

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the Notice of Proposed Rule Making, ("Notice") 11 FCC Rcd 2937 (1996), issued in response to a petition filed by Bick Broadcasting Co. ("Bick"), proposing the substitution of Channel 265C2 for Channel 265C3 at Canton, Missouri. Bick also requested modification of its license for Station KRRY, Channel 265C3, to specify operation on Channel 265C2. The Notice specified that to accommodate Bick's proposal, it would be necessary to either delete vacant Channel 265A at Canton, Illinois, or, in the event an expression of interest was filed during the comment period in this proceeding, to substitute Channel 252A for vacant Channel 265A at Canton, Illinois. Comments and reply comments were filed by Bick reiterating its intention to apply for Channel 265C2.¹ Neil A. Rones and Luann C. Dahl ("Rones & Dahl") filed a counterproposal.²

2. Rones & Dahl, applicant for a construction permit for a new FM station on Channel 266A at Canton, Illinois (BPH-951011MA) oppose the substitution of Channel 252A for Channel 265A at Canton, Illinois, as well as the outright deletion of Channel 265A at Canton,

¹ As indicated in the Notice, Bick's request, although signed, failed to include an affidavit verifying statements contained in its petition, as required by Section 1.52 of the Commission's Rules. Bick was requested to correct the deficiency in its responsive comments, and has complied accordingly.

² Although Rones & Dahl filed a pleading styled as a counterproposal, we do not consider an alternate channel suggestion to be a counterproposal since it does not introduce a new community or propose a higher class allotment than proposed in the Notice. See Clinton, Saint Pauls and Southern Pines, North Carolina and Chesterfield, South Carolina, 6 FCC Rcd 4370 (1991).

Illinois.³ Accordingly, Rones & Dahl counterpropose the substitution of Channel 266A for Channel 265A at Canton, Illinois, and protection of their application. Rones & Dahl point out that they filed an application for a new FM station on Channel 266A at Canton, Illinois, pursuant to Section 73.203(b) of the Commission's Rules on October 11, 1995, which was the final day of the mini-filing window opened for Channel 265A.⁴ Rones & Dahl proposed full class A facilities of six kilowatts effective radiated power at 100 meters above average terrain on Channel 266A; facilities which could not be proposed on Channel 265A due to spacing constraints. Rones & Dahl state that the application for Channel 266A is not mutually exclusive with the proposed upgrade at Canton, Missouri, on Channel 265. The proposed substitute Channel, 252A at Canton, Illinois, would be short spaced at their proposed transmitter site. Rones & Dahl request that Channel 266A be substituted for Channel 265A at Canton, Illinois, and that their application (BPH-951011MA) be granted expeditiously.

3. In reply comments Bick continues to support the substitution of Channel 265C2 for Channel 265C3 at Canton, Missouri, and modification of its license for Station KRRY accordingly. Bick also supports the substitution of Channel 266A at Canton, Illinois, as proposed by Rones & Dahl.

4. We believe the public interest would be served by the substitution of Channel 265C2 for Channel 265C3 at Canton, Missouri, since it will provide expanded reception service to the community. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at petitioner's specified site.⁵ To accommodate the Canton, Missouri, upgrade, we will substitute Channel 266A for Channel 265A at Canton, Illinois. Channel 266A can be allotted to Canton, Illinois, in compliance with the Commission's spacing requirements.⁶ Our Notice proposed the substitution of Channel 252A for Channel 265A or the deletion of Channel 265A at Canton, Illinois, premised on a lack of interest because the channel had been vacant and unapplied for since February of 1982. However, an application (BPH-951011MA), filed by Rones & Dahl during a mini window (October 4, 1995-October 11, 1995), removes the basis for deletion of the channel at Canton, Illinois. Our engineering analysis indicates that Channel 266A can be utilized at the site specified by Rones & Dahl in their application. Therefore, Rones & Dahl will retain cut-off protection for Channel 266A at Canton, Illinois. We will authorize a

³ Channel 265A was allotted to Canton, Illinois, in BC Docket 81-408, released December 3, 1981, with an effective date of February 1, 1982. A mini window was opened for Channel 265A on October 4, 1995, and closed on October 11, 1995.

⁴ Note: Changes in channel and/or class by application are limited to modifications on first, second and third adjacent channels, intermediate frequency (IF) channels, and co-channels which require no other changes to the FM Table of Allotments.

⁵ The coordinates for Channel 265C2 at Canton, Missouri, are 40-07-33 and 91-31-42.

⁶ The coordinates for Channel 266A at Canton, Illinois, are 40-36-49 and 89-56-22.

modification of Bick's license for Station KRRY, Channel 265C3, to specify operation on Channel 265C2 in accordance with Section 1.420(g) of the Commission's Rules.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective October 7, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

| <u>Community</u> | <u>Channel No.</u> |
|------------------|--------------------|
| Canton, Illinois | 266A, 300B1 |
| Canton, Missouri | 265C2 |

6. IT IS FURTHER ORDERED, That the Secretary of the Commission, Shall Send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

Frank R. Jazzo
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Rosslyn, Virginia 22209
(counsel for Neal A Rones and Luann C. Dahl,
applicant for Channel 266A, Canton, Illinois)

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Bick Broadcasting Co. for Station KRRY, Canton, Missouri, IS MODIFIED to specify operation on Channel 265C2 in lieu of Channel 265C3, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, **if the request is granted**, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Bick Broadcasting Co., licensee, of Station KRRY, is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade at Canton, Missouri.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau